

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

RICKY REESE, )  
Plaintiff, )  
v. ) Case No. CIV-18-744-D  
MARY FALLIN, *et al.*, )  
Defendants. )

## ORDER

This matter is before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Shon T. Erwin pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). Judge Erwin recommends upon initial screening that the Complaint be dismissed without prejudice for failure to state a claim upon which relief can be granted.

Plaintiff, who appears *pro se*, has filed a timely objection stating that “[r]ather than dismissal, Plaintiff would request leave to amend his complaint,” and he “requests 30 days to amend” due to his limited access to a law library. Pl.’s Obj. [Doc. No. 15], ¶¶ 1-2, 5. Liberally construed, the Court understands that Plaintiff does not challenge Judge Erwin’s conclusion that his Complaint is deficient, but wishes to cure any deficiencies.<sup>1</sup>

Under these circumstances, the Court finds that Plaintiff has waived further review of the issues addressed in Judge Erwin's Report regarding the Complaint. *See Moore v.*

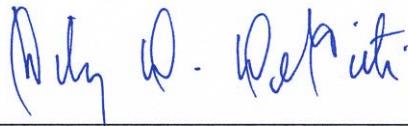
<sup>1</sup> Plaintiff disagrees with Judge Erwin's characterization of certain claims regarding parole consideration. However, an amendment will supersede Plaintiff's original Complaint and render it ineffective. *See Davis v. TXO Prod. Corp.*, 929 F.2d 1515, 1517 (10th Cir. 1991). Therefore, the Court need not decide the sufficiency of these claims as presently stated.

*United States*, 950 F.2d 656, 659 (10th Cir. 1991); *see also United States v. 2121 E. 30th St.*, 73 F.3d 1057, 1060 (10th Cir. 1996). The Court further finds that the Complaint should be dismissed without prejudice and that Plaintiff should be allowed to file an amended complaint.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 14] is ADOPTED in its entirety. The Complaint is DISMISSED with leave to amend. Plaintiff shall file an amended complaint not later than December 4, 2018.

IT IS FURTHER ORDERED that this case is re-referred to Judge Erwin for further proceedings consistent with the initial referral order [Doc. No. 5].

IT IS SO ORDERED this 7<sup>th</sup> day of November, 2018.



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TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE